

1988

Brigham City v. Darrell R. Murphy and Steven W. Murphy : Appellant's Petition for Writ of Certiorari

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Ben H. Hadfield; attorney for respondent.

Michael L. Miller; attorney for appellants.

Recommended Citation

Petition for Certiorari, *Brigham City v. Murphy*, No. 880258.00 (Utah Supreme Court, 1988).

https://digitalcommons.law.byu.edu/byu_sc1/2230

This Petition for Certiorari is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.S9
DOCKET NO. 880258

IN THE SUPREME COURT OF THE STATE OF UTAH

BRIGHAM CITY,	:	
	:	
Plaintiff / Respondent,	:	
	:	Case No. 870299-CA
vs.	:	
	:	
DARRELL R. MURPHY, and	:	
STEVEN W. MURPHY,	:	
	:	
Defendants / Appellants.	:	

APPELLANTS' PETITION FOR WRIT OF CERTIORARI

APPEAL FROM THE FIRST CIRCUIT COURT IN AND FOR BOX ELDER
COUNTY, STATE OF UTAH, BRIGHAM CITY DEPARTMENT, THE
HONORABLE ROBERT W. DAINES, PRESIDING.

Michael L. Miller, Esq.
Attorney for Appellants
20 South Main Street
P.O. Box 399
Brigham City, Utah 84302

Ben H. Hadfield, Esq.
Attorney for Respondent
98 North Main Street
P.O. Box "F"
Brigham City, Utah 84302

FILED

JUL 6 1988

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

BRIGHAM CITY,	:	
	:	
Plaintiff / Respondent,	:	
	:	Case No. 870299-CA
vs.	:	
	:	
DARRELL R. MURPHY, and	:	
STEVEN W. MURPHY,	:	
	:	
Defendants / Appellants.	:	

APPELLANTS' PETITION FOR WRIT OF CERTIORARI

APPEAL FROM THE FIRST CIRCUIT COURT IN AND FOR BOX ELDER
COUNTY, STATE OF UTAH, BRIGHAM CITY DEPARTMENT, THE
HONORABLE ROBERT W. DAINES, PRESIDING.

Michael L. Miller, Esq.
Attorney for Appellants
20 South Main Street
P.O. Box 399
Brigham City, Utah 84302

Ben H. Hadfield, Esq.
Attorney for Respondent
98 North Main Street
P.O. Box "F"
Brigham City, Utah 84302

TABLE OF CONTENTS

Heading	Page(s)
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES.....	1
DECISION OF COURT OF APPEALS.....	1
JURISDICTION.....	2
CONTROLLING PROVISIONS.....	2
STATEMENT OF THE CASE.....	2
ARGUMENT.....	4
POINT I.....	4
POINT II.....	7
POINT III.....	10
CERTIFICATE OF SERVICE.....	11
APPENDIX.....	12
OPINION OF THE UTAH COURT OF APPEALS	
ORDER DENYING PETITION FOR REHEARING	
ORDER DENYING MOTION TO SUPPRESS	
OFFICER'S NARRATIVE	

TABLE OF AUTHORITIES

Cases	Page(s)
<u>Commonwealth v. Swanger</u> , 307 A.2d 875 (Pennsylvania 1973).....	10
<u>Delaware v. Prouse</u> , 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979).....	10
<u>State v. Deitman</u> , 739 P.2d 616 (Utah 1987).....	4,5,6,7,9, 10,11
<u>State v. Ochoa</u> , 544 P.2d 1097 (Arizona 1976).....	10
<u>State v. Trujillo</u> , 739 P.2d 85 (Utah App. 1987)....	7
<u>Terry v. Ohio</u> , 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968).....	6
<u>United States v. Espinosa-Guerra</u> , 805 F.2d 1502 (11th Cir. 1986).....	8
<u>United States v. Mendenhall</u> , 446 U.S. 544, 100 S.Ct. 1870 (1980).....	7
<u>United States v. Merritt</u> , 736 F.2d 223 (5th Cir. 1984)	4,7
Statutes	Page(s)
Utah Code Annotated, Section 41-2-104.....	10

STATEMENT OF ISSUES

I.

Did the majority decision of the panel of the Utah Court of Appeals err in holding that the arresting officer, acting under the mistaken belief that the driver of the vehicle was a person whom he had reason to believe did not have a valid license to operate a motor vehicle, did not exceed the scope and purpose of the initial stop in requesting that the driver, who he knew was not the person originally suspected of driving, produce his driver's license without any independent suspicion that the driver or the passenger had been or was about to engage in any illegal activity.

II.

Did the opinion of the majority of the panel of the Utah Court of Appeals misapply the law in holding that even though the arresting officer initially detained the defendants against their will, there was no evidence that the defendants were so detained at the point in time when the arresting officer asked to see the driver's license of defendant, Steven Murphy.

DECISION OF COURT OF APPEALS

The panel of the Utah Court of Appeals in a two to one unpublished decision dated March 18, 1988 affirmed the decision of the trial court in denying defendants' motion to suppress. Defendants petitioned for a rehearing which was denied by an order dated May 6, 1988.

JURISDICTION

The Utah State Supreme Court has jurisdiction to hear this matter pursuant to Utah Code Annotated, Section 78-2-2 (3)(a).

The decision of the panel of the Utah Court of Appeals is dated March 18, 1988. Defendants thereafter petitioned for a rehearing which was denied by an order dated May 6, 1988. The order granting an extension of time to file this petition with the above-entitled court is dated June 3, 1988.

CONTROLLING PROVISIONS

The Fourth Amendment to the United States Constitution:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated..."

Article I., Section 14 of the Constitution of Utah:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated..."

STATEMENT OF THE CASE

The defendants filed a motion to suppress in the trial court. This motion was denied and defendant, Darrell Murphy, was thereafter convicted of illegal possession of alcohol and defendant, Steven Murphy, was convicted of driving under the influence and driving on suspension. Defendants thereafter filed notice of appeal to the Utah Court of Appeals. The panel of the Utah Court of Appeals affirmed the convictions with one judge dissenting. Defendants thereafter filed a petition for rehearing which was denied. Defendants now petition the Supreme Court of

the State of Utah for a writ of certiorari.

The facts upon which the parties rely for this petition are contained in a written narrative by the arresting officer which was made part of the record in the trial court and a copy of which is included in the appendix hereto.

On October 3, 1986 the arresting officer received a radio call from another police officer. This second officer stated that he had seen the vehicle owned by defendant, Darrell Murphy, and that he believed that Darrell was driving. The second officer also informed the arresting officer that Darrell's operator's license was suspended. The arresting officer went to the area where the vehicle had been seen; and observed the vehicle. The officer called the dispatcher and verified that in fact Darrell's license was suspended. The officer then states that as the vehicle was making a turn in front of him, his headlights illuminated the interior of the vehicle and specifically the driver's face. At this point it appeared to him that the driver was in fact Darrell Murphy. The officer then stopped the vehicle and approached the driver's side window. Upon seeing the driver, the officer realized that he was mistaken in his belief that the driver was Darrell. The driver of the vehicle was defendant, Steven Murphy, Darrell's older brother. Darrell Murphy was in fact seated in the passenger side. The officer explained the reason for the stop, ie. his belief that Darrell was driving the car, to which Darrell responded, "I know I'm on suspension, that's

why he is driving". The officer then asked Steven to produce his license, to which Steven replied that he did not have his license with him. The officer then proceeded back to his patrol car to check the status of Steven's license. The report came back that Steven was also on suspension. Upon returning to the defendants' vehicle the officer stated that he noticed a smell of alcohol coming from Steven's breath; and later a similar odor from Darrell's breath. Based upon this suspicion, further investigation resulted in the arrest of both defendants.

ARGUMENT

POINT I.

The majority decision of the panel of the Utah Court of Appeals is in conflict with a decision of the above-entitled Court in holding that the arresting officer was justified in continuing to detain the defendants despite the fact that the purpose of the stop had already been effectuated.

The majority in its opinion, dated March 18, 1988, states:

"The purpose of the stop was not fulfilled when Steven was found to be the driver. The purpose of the stop was not fulfilled when Steven was asked but failed to produce his operator's license. The purpose was fulfilled only when the officer contacted the dispatcher and discovered the status of the operator's license. The officer was at all time acting within the proper scope of the stop..."

This court in State v. Deitman, 739 P.2d 616 (Utah, 1987) citing from United States v. Merritt, 736 F.2d 223 (5th Cir. 1984) states:

"...an officer may seize a person if the officer has an articulable suspicion that the person has committed or is about to commit a crime; however, the detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop"... (emphasis added).

The conclusion reached by the majority of the panel of the Utah Court of appeals is in conflict with the holding in Deitman, and is not consistent with the facts. The officer states in his narrative that he received a radio report from another officer that the vehicle of defendant, Darrell Murphy, had been seen and that Darrell was possibly driving while his license was suspended. Once the officer located the vehicle, he checked with dispatch and was informed that Darrell's license was in fact suspended. The officer stated that as the vehicle turned in front of his car and the lights from his car illuminated the inside of defendants' vehicle, he thought the person driving was Darrell. The officer stopped the vehicle to determine if in fact Darrell Murphy was the driver and if so was his license suspended. The officer was able to effectuate this purpose as soon as he reached the vehicle and learned that the driver was not Darrell. The officer was apparently familiar with both defendants and knew the identity of the driver as soon as he was able to see him at close range. The suspicions which led him to stop the vehicle were at that instance satisfied. The holding of the Court of Appeals that the officer was justified in continuing to detain the defendants violates the mandate of this Court that the detention last no longer than is necessary to effectuate the purpose of the stop.

The decision of the Court of Appeals attempts to avoid the conflict with Deitman, by holding that the officer was acting within the scope and purpose of the initial stop and therefore did not detain the defendants longer than was necessary to effectuate the purpose thereof. This is to say that, according to the majority decision, demanding the license of defendant Steven Murphy was somehow a part of the reason that the officer made the initial stop. Again the majority is in conflict with the holding in Deitman. The holding in Deitman, is that "an officer may seize a person if the officer has an articulable suspicion that the person has committed or is about to commit a crime". The officer had absolutely no objective basis to suspect that Steven Murphy had been or was about to engage in a crime. The only information that the officer had was about Darrell Murphy. How then could the purpose of the stop have included investigating Steven or his license to operate a vehicle. The officer did not even know or suspect that Steven was in the vehicle when he stopped it. Likewise, at the time that the officer requested that Steven produce his license, he had no suspicion from an independent source that Steven had been or was about to engage in any crime. In the case of Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 889 (1968) the United States Supreme Court stated that:

"A search which is reasonable at its inception may violate the fourth amendment by virtue of its intolerable intensity and scope; the scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible."

The holding of the majority that the officer was acting within the scope of the initial stop is anything but "strictly tied to and justified by the circumstances".

POINT II.

The opinion of the majority conflicts with a decision of another panel of the Utah Court of appeals and with a decision of the above-entitled court in holding that there is no evidence that the defendants were detained against their will at the point in time that the officer requested to see the license of defendant, Steven Murphy.

The opinion of the majority states:

"The officer, therefore, is properly standing beside vehicle. Absent any suspicion, Deitman permits the officer to ask questions of the driver so long as the driver is not detained against his will. An examination of the narrative fails to show any indication of detention."

This court in State v. Deitman, supra, again quoting from, United States v. Merritt, supra, states:

"...an officer may approach a citizen at anytime and pose questions so long as the citizen is not detained against his will;..."

Another panel of the Utah Court of Appeals in in State v. Trujillo, 739 P.2d 85 (Utah App. 1987) quoting from United States v. Mendenhall, 446 U.S. 544, 100 S.Ct. 1870 (1980) stated:

"When a reasonable person, based on the totality of the circumstances, remains, not in the spirit of cooperation with the officer's investigation, but because he believes he is not free to leave a seizure occurs."

In United States v. Espinosa-Guerra, 805 F.2d 1502 (11th Cir. 1986) the court stated:

"There are three tiers of police-citizen encounters with respect to Fourth Amendment; police-citizen communications involving no coercion or detention, which do not implicate Fourth Amendment scrutiny, brief seizures involving reasonably brief encounters in which reasonable person would have believed that he or she was not free to leave, which require showing by government of reasonable articulable suspicion that person has committed or is about commit crime, and full scale arrests, which are more intrusive encounters requiring probable cause." (emphasis added).

The court should have applied this "reasonable person" test to determine if the defendants were detained against their will. It would appear that the majority did not. The facts are that the arresting officer stopped the defendants vehicle at approximately 1:25 pm., presumably through some audio and/or visual signal. There is no question that this was against the will of defendants. The officer next proceeded to the driver's side where he realized that the driver was Steven and that Darrell was seated in the passenger side. The officer next explained to defendants the reason for the stop; and then requested that Steven produce a driver's license. When Steven could not, the officer requested the necessary information from Steven with which to call dispatch to check the license. Applying the "reasonable person" test then, would a reasonable person in the position of defendants, believe that he or she was at any point free to leave. The majority opinion would seem to indicate that the detention ended somewhere between the officer recognizing Steven as the driver and Darrell

as the passenger, and the officer asking Steven for his license. Would a reasonable person have believed that he or she was free to leave at this point in time? Should the defendants have reasonably believed that they were free to simply roll up the window and drive away unhindered? And if so, what specific fact could a reasonable person point to as the indication that he or she was no longer required to remain? What indication did the officer give that the defendants were free to leave? Obviously, a reasonable person would not have believed that he or she was free to leave. The officer gave no indication, spoken or otherwise, that the detention he had just effected, under the color of his authority as a peace officer, was at an end. A reasonable person would have believed that he or she was required to do exactly what the defendants did, remain and respond.

The majority also seems to be misapplying the standard of Deitman, supra. Deitman, involved a situation where the officer asked the suspects if they would mind speaking with him. The suspects voluntarily crossed the street to meet the officer and produced identification when requested. There had been no prior detention of the suspects as was the case with defendants. Defendants do not claim that what is initially a detention against will cannot evolve into something less; but there would seem to have to be some point in time where a reasonable person would believe that he or she was free to go and voluntarily choose to remain. This is clearly not the case with defendants. The

defendants could not have reasonably believed that they were free to leave after the officer had stopped their vehicle and approached on the driver's side; and consequently they were in fact still being detained against their will.

POINT III.


The real issue in this case is one which should be decided by the above-entitled court.

The facts of this case suggest that the real issue is whether or not an officer may request to see the driver's license of a person who he has already detained for another reason. The United States Supreme Court in the case of Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L. Ed. 2d 660 (1979) has held that the mere fact that a person is operating a motor vehicle does not justify an officer to detain the person to determine if he/she is operating with a valid license. See also State v. Ochoa, 544 P.2d 1097 (Arizona 1976) and Commonwealth v. Swanger, 307 A.2d 875 (Pennsylvania 1973). In this case the defendants were already detained due to the mistaken belief of the officer as to the identity of the driver. Even though the officer did not need to request Steven's license to determine that he was not the person he thought him to be at first glance, was the officer justified in asking Steven for his license because of the requirement that all persons operating a motor vehicle in the state have a valid license, Utah Code Annotated, Section 41-2-104. Once again quoting from the Deitman, this court has already held that:

"...an officer may seize a person if the officer has an articulable suspicion that the person has committed or is about to commit a crime; however, the detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop."

To allow an officer to continue to detain a motorist in order to determine whether or not he/she is operating with a valid license, despite the lack of any articulable suspicion of wrongdoing, would seem to be in conflict with the established position of this court. In any event, this is clearly a decision which is of such importance that it should be made by this court.

DATED this 6th day of July, 1988.


Michael L. Miller
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I mailed four true and exact copies of the foregoing to the attorney for Respondent, postage prepaid, at:

Ben H. Hadfield
Attorney at Law
P.O. Box "F"
Brigham City, Utah 84302

DATED this 6th day of July, 1988.


Michael L. Miller

IN THE UTAH COURT OF APPEALS

-----oo0oo-----

Brigham City,)	
)	
Plaintiff and Respondent,)	OPINION
)	(Not For Publication)
v.)	
)	
Darrell R. Murphy and)	Case No. 870299-CA
Steven W. Murphy,)	
)	
Defendants and Appellants.)	

Before Judges Bench, Davidson and Jackson.

FILED

MAR 13 1988

Timothy M. Shea
Clerk of the Court
Utah Court of Appeals

DAVIDSON, Judge:

Defendant Darrell Murphy, a minor, was convicted of illegal consumption of alcohol. Defendant Steven Murphy was convicted of driving under the influence of alcohol and driving on a suspended license. Both appeal.

No record was provided to this Court, the parties having agreed to "rely on" a written narrative by the arresting officer to state the facts. We, therefore, treat the narrative with the same consideration as the trial record.

At approximately 11:25 p.m. on October 3, 1986, the reporting officer stopped a vehicle belonging to defendant Darrell Murphy. The stop was based upon the suspicion that Darrell was driving on suspension, evidently he being known to the police. The officer stopped the vehicle and discovered that the driver was defendant Steven Murphy, the older brother of Darrell. Both brothers "look extremely similar." Upon request by the officer, Steven was unable to produce an operator's license. The officer then contacted the dispatcher to check the license and was told that Steven's license had been suspended and that the registration of the vehicle had expired. Upon return to the vehicle the officer detected the odor of alcohol from Steven. Further investigation resulted in Steven being charged with driving under the influence and Darrell with illegal consumption of alcohol.

On appeal the defendants admit that the stop of the vehicle was justified. They argue, however, that once it was

determined that Steven and not Darrell was driving, the officer had no justification to continue to detain the defendants or to ask to see Steven's driver's license.

Both sides agree that the basis for the stop of the vehicle was proper. That basis was to determine if the driver, who was thought to be Darrell, was properly licensed pursuant to Utah Code Ann. § 41-2-104 (1987),¹ which requires that all operators of motor vehicles upon the highways of the state be licensed. The question then is whether the officer acted outside the purpose or scope of the stop. Utah Code Ann. § 41-2-124 (1987)² requires all drivers to have an operator's license in their possession when operating a motor vehicle and to display it on demand of a peace officer. The purpose of the stop was not fulfilled when Steven was found to be the driver. The purpose was not fulfilled when Steven was asked but failed to produce his operator's license. The purpose was fulfilled only when the officer contacted the dispatcher and discovered the status of the operator's license. The officer was at all times acting within the proper scope of the stop and investigation or pursuant to further suspicions arising from the investigation.

The Utah Supreme Court in State v. Deitman, 739 P.2d 616 (Utah 1987) described the three levels of permissible police contact with the public.

(1) an officer may approach a citizen at anytime [sic] and pose questions so long as the citizen is not detained against his will; (2) an officer may seize a person if the officer has an "articulable suspicion"

1. Utah Code Ann. § 41-2-104.

(1) No person, except one expressly exempted under § 41-2-107, 41-2-108, or 41-2-111, or Subsection 41-2-121(4), or Chapter 22, Title 41, may operate a motor vehicle on a highway in this state unless the person is licensed as an operator by the division under this chapter.

No claim has been raised that either defendant is exempted under any section of the Utah Code.

2. Utah Code Ann. § 41-2-124.

(1) The licensee shall have his license in his immediate possession at all times when operating a motor vehicle and shall display it upon demand of a justice of peace, a peace officer, or a field deputy or inspector of the division.


that the person has committed or is about to commit a crime; however, the "detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop"; (3) an officer may arrest a suspect if the officer has probable cause to believe an offense has been committed or is being committed.

Id. at 617-18 (quoting United States v. Merritt, 736 F.2d 223, 230 (5th Cir. 1984)).

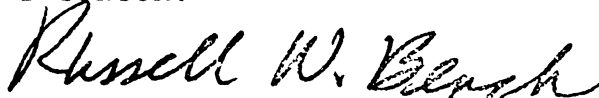
We are not concerned with the stop since it was concededly valid. The officer, therefore, is properly standing beside the vehicle. Absent any suspicion, Deitman permits the officer to ask questions of the driver so long as the driver is not detained against his will. An examination of the narrative fails to show any indication of detention. This Court will not find such detention through supposition and speculation based upon unknown testimony in an absent record.

Absent some showing that defendants were detained against their will, the officer acted properly in requesting to see Steven's driver's license. Since such questioning led to the discovery of facts which gave rise to additional articulable suspicion of other crimes, the officer was justified in proceeding.

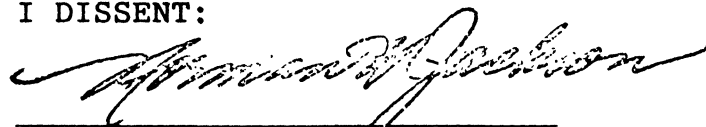
The convictions of both defendants are affirmed.


Richard C. Davidson, Judge

I CONCUR:


Russell W. Bench, Judge

I DISSENT:


Norman H. Jackson, Judge

CERTIFICATE OF MAILING

CASE TITLE:

Brigham City,
Plaintiff and Respondent,
v. No. 870299-CA
Darrell R. Murphy and Steven W. Murphy,
Defendants and Appellants.

PARTIES:

Michael L. Miller
Attorney for Appellants
20 South Main Street
P.O. Box 399
Brigham City, UT 84302

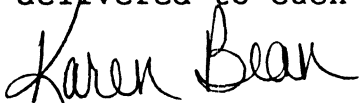
Ben Hadfield
Phillip W. Hadfield
Mann, Hadfield & Thorne
Attorneys for Respondent
98 North Main
P.O. Box "F"
Brigham City, UT 84302

TRIAL COURT:

Honorable Robert W. Daines
Circuit Court Judge
20 North Main
Brigham City, UT 84302

CERTIFICATION:

I hereby certify that on the 18th day of March, 1988, a true and correct copy of the foregoing OPINION was mailed or personally delivered to each of the above parties.



Karen Bean
Case Management Clerk

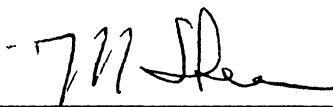
UTAH STATE COURT OF APPEALS

Brigham City,)	ORDER
)	
Plaintiff and Respondent,)	
)	
v.)	No. 870299-CA
)	
Darrell R. Murphy and)	
Steven W. Murphy,)	
)	
Defendants and Appellants.))	

This matter is before the Court upon a Petition for Rehearing filed by the appellant.

IT IS HEREBY ORDERED that the appellant's petition for rehearing is denied.

FOR THE COURT:



Timothy M. Shea
Clerk of the Court

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of May, 1988, a true and correct copy of the foregoing Order was mailed to each of the following:

Michael L. Miller
Attorney for Appellants
20 South Main Street
P.O. Box 399
Brigham City, UT 84302

Ben Hadfield
Phillip W. Hadfield
Mann, Hadfield & Thorne
Attorneys at Law
98 North Main
P.O. Box "F"
Brigham City, UT 84302

Hon. Robert Daines
First Circuit Court
Brigham City Department
#86CM279A21, 86TF373MA21, 86TF372MA21

Julia C. Whitfield
Case Management Clerk

FIRST CIRCUIT COURT, STATE OF UTAH, BOX ELDER COUNTY,
BRIGHAM CITY DEPARTMENT

BRIGHAM CITY,)	
)	
Plaintiff,)	
vs.)	
)	DECISION
DARRELL R. MURPHY and)	Case no: 86 CM 279A21
STEVEN W. MURPHY,)	86 TF 373MA21
)	86 TF 372MA21
Defendants.)	
)	

The Court hereby denies the Defendant's motion to
Suppress.

DATED this 15th day of January, 1987.

BY THE COURT:

151
Stanton M. Taylor
Circuit Court Judge

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the
foregoing Decision to Ben H. Hadfield, Attorney at Law, 98 North
Main, Brigham City, Utah 84302-0906 and Michael L. Miller,
Attorney at Law 20 South Main, Brigham City, Utah 84302 this 15th
day of January 1987.

Ben H. Hadfield

BRIGHAM CITY POLICE DEPARTMENT

B.C.P.D. (J. Johnson)

00-06109

reserved for coding

174
A770RPM

In the space below and on continuation sheet
if necessary, record the details of the offense.
Use the cue card as an outline.

3 ADDRESS OF ABOVE BUSINESS OR PERSON 20 North Main Brigham City			
4 RES. PHONE *****	5 BUS. PHONE 723-3421	6 OFFENSE 9400 Drunk Driving	
7 LOCATION OF OCCURRENCE 200 South 700 East Brigham City			8 GRID NO 1
9 DATE OF OCCURRENCE MO DAY YR 10-03-86	10 TIME OF OCCURRENCE 2325	11 DATE REPORTED MO DAY YR 10-03-86	12 TIME REPORTED 2325
14 OFFICER'S TIME 1 hr 45 min		15 ASSISTING OFFICER(S) TIME 25 min	

16. DISPOSITION			
ARREST <input checked="" type="checkbox"/>	REFERRAL <input type="checkbox"/>	UNFOUNDED <input type="checkbox"/>	COMPLETED <input type="checkbox"/>
ACTIVE	CLEARED BY EXCEPTION <input type="checkbox"/>		

IDENTIFIED	PHONE <input type="checkbox"/>	IN PERSON <input type="checkbox"/>	ON VIEW <input type="checkbox"/>	LETTER <input type="checkbox"/>	TELEGRAM <input type="checkbox"/>	TWX <input type="checkbox"/>	RADIO <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>
ASSIGNED	DIVISION		NO	OFFICER ASSIGNED		DIVISION		NO
HINSON, Jeff	Patrol		2C23	STIVER, Jeff		SGT Patrol		2C8

S OF COMPLAINT:

-60 on AER117 at 200 South and 700 East.

1971 Dodg Darrell Murphy 1062 Sycamore Brigham City 0686)

S OF INVESTIGATION IDENTIFICATION SECTION:
REST DATA #1:

me: MURPHY, Steven Wayne
B/Age: 02-01-65 / 21
ce/Sex: Cauc./Male
ere was arrestee booked: BES0
tation #'s: 63841 & 14790

ARREST DATA #2:

Name: MURPHY, Darrell R.
DOB/Age: 01-13-67 / 19
Race/Sex: Cauc/Male
Where was arrestee booked: BES0
Citation #: 14739

EMENTS OF THE INVESTIGATION:
OTHER OFFENSES - CUE CARD #10

Briefly describe the offense: Driving under the influence of alcohol, Driving on Suspension and illegal possession of alcohol.

Describe the location: Approx. 210 South on 700 East Brigham City


List other pertinent data: Intoxilyzer Test Results: #1 - .12% BAC & #2 - .07% BAC

OFFICERS NARRATIVE: Officer L. Ludwig and Officer D. Johnsen had just cleared from a traffic stop in the area of 700 East and 300 South. While at that location Officers had observed a vehicle belonging to Darrell Murphy stop in the area and turn off the lights. The occupants stayed in the vehicle. Officer Johnsen stated he believed Darrell Murphy was driving the car. Officer Ludwig and Johnsen were now enroute to another call and notified R/O. R/O checked with BCPD Dispatch, which confirmed that Darrell Murphy had a suspended Drivers License, which was the information passed onto R/O from Officer D. Johnsen earlier. R/O arrived in the area and observed the subject vehicle, a Gold 1971 Dodge Charger UT AER117 turn in front of R/O's patrol vehicle north on 700 East from 300 South. It appeared to R/O as the subject vehicle turned in front of R/O's patrol vehicle, and as the headlights from R/O's vehicle and the street light illuminated the driver, that it was Darrell Murphy driving the vehicle. R/O stopped the vehicle at approx. 210 South on 700 East. The driver of the vehicle as Steven W. Murphy, the older (CONT on 102 Form 2 hr 10 min

NOTED	BY (OFFICER)	DATE TYPED	TYPED BY	APPROVED BY	ASSIGNED TO
		10-03-86	L. Johnsen		
ING NO(S)	BOOKED AT	DATE BOOKED	BOOKED BY	DISTRIBUTION	PAGE

CONTINUATION OR FOLLOW-UP UNIFORM INCIDENT/OFFENSE REPORT		BCPD Form 102
1. Business, Victim or Complainant B.C.P.D. (J Johnson)		2. Case No. 86-08169
		Reporting Agency & ID No. Brigham City Police Department 20100
3. Type Offense 9400 Drunk Driving	4. Officer ID 2c23	(Check one) Continuation <input checked="" type="checkbox"/> Follow-up <input type="checkbox"/>

OFFICERS NARRATIVE CONT.: brother of Darrell Murphy. Darrell Murphy was sitting in the front passenger seat. It should be noted that both subjects being brothers, look extremely similar. R/O explained the nature of the stop to arrestees, and Darrell Murphy stated, "I know I'm on suspension, thats why hes driving." R/O took the information from Driver/Arrestee #1 as he did not have a Drivers License in his possession and checked Drivers License Status with BCPD Dispatch. R/O was informaed that Arrestee #1/Driver was also on Suspension Type 0 and that the DL had expired in February of 1985. Also during this time it was ascertained by Officer that the registration of subject vehicle was over 90 days expired (6 of 86). R/O retrned to subject vehicle and began explaining the circumstances to Arrestee #1/Driver, when R/O detected the odor of alcohol coming from arrestee #1's breath. R/O asked arrestee if he had been drinking and Arrestee replied "Yeah, I've had a couple, but I'm OK." Arrestee then stated "I can pass your tests. Do you want to give them to me?" R/O requested arrestee #1 to step from the vehicle onto the sidewalk. Arrestee #1 was asked to perform several sobriety tests and attempted to do so. Arrestee did not perform the sobriety test satisfactorily and was placed under arrest. Sgt. Stiver arrived during the sobriety tests and assisted R/O. Arrestee #2 was then asked to step from the vehicle as he was the registered owner of the vehicle. R/O asked Arrestee #2 if he had been drinking, to which Arrestee #2 replied "Yeah, but not much." R/O could detect an odor of alcohol coming from Arrestee #2's breath also. Due to the fact that Arrestee #2 was only 19 yoa, Arrestee #2 was placed under arrest for Illegal Possession of Alcohol. Both Arrestee were transported to BES0 and given Intoxilyzer Tests and booked. Arrestee #1 was booked for DUI, Driving on Suspension and Possession of Paraphernalia. The paraphernalia was located by Jailer Phenes during a search while at the Jail. The paraphernalia was booked into evidence by R/O, for testing. Arrestee #1 was booked for Illegal Possession of Alcohol. Sgt. Stiver stayed with the vehicle and state impounded the vehicle. The vehicle was towed to/by Davis Dodge. No further action was taken at this time.

OFFICER'S SIGNATURE 	
ICATED	BY (OFFICER)
DATE TYPED	TYPED BY:
APPROVED BY	ASSIGNED TO
G NO(S)	BOOKED AT
DATE BOOKED	BOOKED BY:
DISTRIBUTION	PAGE —